184

(4)

Supreme Court
FILED
MAR 29 2011
OFFICE OF THE CLERK

No. 09-1361

In the Supreme Court of the United States

CITY OF RENO, RYAN ASHTON, AND DAVID ROBERTSON,
Petitioners,

v.

CHARLA CONN AND DUSTIN CONN,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF FOR RESPONDENTS

TERRI KEYSER-COOPER
Counsel of Record
Law Office of Terri Keyser-Cooper
3365 Southampton Drive
Reno, NV 89509
(775) 337-0323
keysercooper@yahoo.com

DIANE K. VAILLANCOURT
Law Office of Diane K. Vaillancourt
849 Almar Ave., Ste. C403
Santa Cruz, CA 95060
(831) 458-3440

CHARLES A. ROTHFELD
ANDREW J. PINCUS
PAUL W. HUGHES
MICHAEL B. KIMBERLY
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000

Counsel for Respondents

SUPPLEMENTAL BRIEF FOR RESPONDENTS

Pursuant to Rule 15.8 of the Rules of this Court, respondents submit this brief to address the impact on this case of the Court's recent decision in *Connick* v. *Thompson*, No. 09-571 (Mar. 29, 2010).

Brenda Clustka committed suicide while in the custody of the City of Reno. Respondents, Clustka's survivors, sued petitioners, two police officers who, despite hearing Clustka threaten to commit suicide and witnessing her attempt to do so, failed to report this information to subsequent custodians. They also sued the City of Reno, contending that it was deliberately indifferent for failing to train its officers to respond to suicide risks posed by persons in their custody. Reversing the district court's grant of summary judgment to the petitioners, the court below concluded that respondents presented triable questions of fact with respect to whether the individual officers were deliberately indifferent. Additionally, the court concluded that respondents presented sufficient evidence to raise triable questions as to whether the City's failure to train its police officers established municipal deliberate indifference. Br. in Opp. 3-11.

This Court's decision in *Connick* is wholly consistent with the decision below. Certiorari in this case therefore should be denied.

a. In *Connick*, the Court indicated that "a municipality's failure to train its employees in a relevant respect" may be challenged under 42 U.S.C. § 1983 when it "amount[s] to deliberate indifference to the rights of persons with whom the untrained employees come into contact." Slip op. at 9 (quotation omitted). Although "a stringent standard," "when city policymakers are on actual or constructive notice

that a particular omission in their training program causes city employees to violate citizens' constitutional rights, the city may be deemed deliberately indifferent if the policymakers choose to retain that program." *Ibid.* (quotation omitted). Accordingly, a "pattern of similar constitutional violations by untrained employees is ordinarily necessary to demonstrate deliberate indifference for purposes of failure to train." *Id.* at 9-10 (quotation omitted).

The claimant in *Connick*, however, attempted to rely on a "single-incident" theory, suggesting that a "showing of 'obviousness' can substitute for the pattern of violations ordinarily necessary to establish municipal culpability." Slip op. at 11. Although the Court noted that "unconstitutional consequences of failing to train could be so patently obvious that a city could be liable under [Section] 1983 without proof of a pre-existing pattern of violations," the Court held that a failure to train government attorneys to avoid violations of *Brady* v. *Maryland*, 373 U.S. 83 (1963), is not such a circumstance. Slip op. at 11-12.

b. *Connick* is consistent with the holding below because the municipal liability claim here *is* based on a "pattern of similar constitutional violations," and is not the sort of "single-incident" theory considered by *Connick*.

First, the court of appeals in this case concluded that evidence in the record demonstrates that "the City did, in fact, fail to train its officers in suicide prevention and the identification of suicide risks." Pet. App. 47. Indeed, "[t]he City of Reno has not provided any evidence to the contrary." *Ibid.*

Second, the court identified specific evidence demonstrating that there was a substantial pattern of past constitutional violations. Evidence in the record demonstrates that five *other* suicides occurred at the Washoe County Jail within a two-year period. Pet. App. 47. And one of the individual petitioners testified that he had "encountered between 500 and 1,000 people threatening to kill themselves" in his career. *Id.* at 47-48. Thus, the City's failure to train had the "highly predictable consequence" of permitting inmate suicide. Pet. App. 48.

Third, the court of appeals found that, given the evidence in the record, a jury could conclude that the if the City had properly trained its officers, the individual defendants would not have been deliberately indifferent to Cluska's medical needs. Pet. App. 48. That is, had the individual defendants "been trained in suicide prevention, there is a reasonable probability that they would have responded differently and reported to the jail that Clustka was at risk of suicide, or taken her directly to the hospital." *Ibid.*

The court's decision below was thus premised on evidence in the record that could lead a jury to conclude that (a) the City knew that prisoners were at risk of committing suicide in the Washoe County Jail, (b) had the City adopted a training program for its police officers, it would have prevented these suicide deaths, and (c) in failing to implement such a training program, the City was deliberately indifferent.[1] This is precisely the sort of liability theory the

---

[1] The Ninth Circuit's analysis with respect respondents' argument that the City was deliberately indifferent for failing to adopt and implement policies to prevent inmate suicide was identical: "As the Conns have presented sufficient evidence of a

Court in *Connick* found *could* support a claim for municipal deliberate indifference. A jury must now decide these disputed questions of fact in this case based on the substantial evidence in the record.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

TERRI KEYSER-COOPER
Counsel of Record
Law Office of Terri Keyser-Cooper
3365 Southampton Drive
Reno, NV 89509
(775) 337-0323

DIANE K. VAILLANCOURT
Law Office of Diane K. Vaillancourt
849 Almar Ave., Ste. C403
Santa Cruz, CA 95060
(831) 458-3440

CHARLES A. ROTHFELD
ANDREW J. PINCUS
PAUL W. HUGHES
MICHAEL B. KIMBERLY
Mayer Brown LLP
1999 K Street, NW
Washington, DC 20006
(202) 263-3000

Counsel for Respondents

MARCH 2010

---

failure to adopt and implement suicide-prevention policies so as to give rise to a jury question, the rest of our analysis mirrors that which we described above regarding the failure to train." Pet. App. 50.